

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4745 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CREATIVE CASTICS LIMITED

Versus

GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION

Appearance:

MR SN SOPARKAR for Petitioner

MR MB GANDHI for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/12/96

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.M.B.Gandhi,
learned Advocate appearing for the respondent.

2. On or around 22.11.1985 the petitioner was registered as a Private Limited Company. Thereafter on 18.7.1990 the respondent Corporation allotted a plot bearing No.102, GIDC Phase-II, Junagadh to the said

company. On or around 6.10.1994 Resolution came to be passed in the extra-ordinary general meeting of the petitioner for converting petitioner (private limited company, as it was) into public limited company (as it is now). On or around 18.10.1994 the Registrar of Companies, Gujarat issued fresh certificate of incorporation to the petitioner. On 31.10.1994 the petitioner addressed a letter to the Rajkot Office of the respondent Corporation intimating to it about the change in the name of the company. On 23.11.1995 the petitioner addressed a letter to the respondent requesting the respondent to intimate to it the amount payable by the petitioner. On 2.12.1995 the respondent intimated to the petitioner that amount payable by the petitioner comes to Rs.2,71,070/-. The petitioner paid the full amount to the respondent Corporation on 26.3.1996, which resulted in issuance of Certificate stating that in the name of Creative Castings Ltd. the petitioner made full payment towards the plot. On or around 16.4.1996 the petitioner requested the respondent Corporation for execution of lease deed. Thereupon the petitioner issued letter dated 24.4.1996 for clarifying the legal position, in reply to which the impugned communication dated 7.5.1996 came to be issued inter alia stating therein that 10 % transfer fees of the prevailing price would be applicable and would be communicated to the petitioner within a short time on re-fixation of allotment price of Junagadh - II Estate. It has been stated that as per the terms of contract between the parties the petitioner would be liable to pay 10 % transfer charges.

3. I have heard the learned Advocates for the parties.

4. The question which has been raised on behalf of the petitioner is whether on conversion of a private limited company into a public limited company there can be any liability to pay transfer charges as stated in the impugned communication. Mr.Soparkar, learned Advocate for the petitioner, in order to bring home the question, has made reference to Sections 3, 21, 23, 43 and 43A of the Companies Act, 1956 and the decisions contained in the case of Pioneer Protective Glass Fibre P. Ltd. V/s. Fibre Glass Pilkington Ltd., reported in 1986 (60) Company Cases 707, Solvex Oils and Fertilizers V/s. Bhandari Cros-fields (P) Ltd., reported in 1978 (48) Company Cases 260 and Economic Investment Corporation Ltd. V/s. Commissioner of Income-Tax, West Bengal & ors., reported in 1970 (40) Company Cases 1.

5. It is no doubt true that by virtue of the

decisions quoted above what is done when the private limited company is transformed into a public limited company is to effect change of name and the constitution of the company is not changed. However, it has also to be noticed from the decisions that rights and obligations under the Law in so far as the old company are concerned, they would pass to the new company. It may be seen that Section 3 sets out the points of difference between a private limited company and a public limited company. In that view of the matter it would not be necessary to go into the principle which has been sought to be canvassed by Mr.Soparkar. What is important to be borne in mind is the obligations which would be answerable by a company before the change of its name. If some obligations are created at an earlier point of time under the contract between the 'old company' and the third party, will it be just and proper for the 'new company' to say that the obligations dis-appear? In my opinion the simple answer would be in the negative. In the present case what is required to be interpreted is not the provisions of the Companies Act as referred to by Mr.Soparkar, but the clause in the contract between the parties under which obligation to pay 10 % transfer charge is sought to be invoked. The said Clause in so far as is relevant for deciding the controversy would read :

"That he will not transfer, assign underlet or part with the possession of the demised premise or any part thereof or any interest therein without the previous permission of the Lessor. For the purpose of this covenant, any change in the constitution of the Lessee shall be deemed to be a transfer by the Lessee of his interest in the demised premises in favour of another person. Provided that where the Lessee is a body corporate, a change in its Board of Directors or Managing Committee by whatever name called shall not be deemed to be a change in the constitution of the Lessee. Provided further that where the lessee, for the purpose of constructing a building on the demised premises, is to obtain loan from a bank or other financial institution by mortgaging his leasehold interest in the demised premises in favour of such bank or institution, permission of the Lessor shall be deemed to have been given subject to the conditions :

- (a) that such mortgage shall not affect the rights and powers of the Lessor under this Lease Deed and

(b) that the Lessor before exercising his rights and powers under the Lease Deed will consult the bank or as the case may be, the financial institution concerned."

6. On a plain reading of the aforesaid clause it does appear that any change in the Constitution of the lessee is deemed to be a transfer by the lessee of his interest in the demised premises in favour of another person. It is only the change in the Board of Directors or the Managing Committee of a body corporate which is not covered under the aforesaid clause.

7. In the above view of the matter the request for setting at naught the communication impugned in this petition can not be entertained.

8. Rule is, therefore, discharged. Interim relief vacated. No order as to costs.

9. At the request of Mr.Soparkar and after hearing Mr.M.B.Gadnhi, the stay of the operation of the impugned order granted by order dated 10th July 1996 is hereby continued for a period of six weeks from today.

* * * * *